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Issues Raised in the Prosecution of an Undercover Fence Operation Conducted by the US Army Criminal Investigation Command

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Introduction

During the summer of 1979, the US Army Criminal Investigation Command (USACIDC) initiated an undercover operation at Fort Carson, Colorado. Special agents from the USACIDC (commonly known as the CID) and local civilian police officers established a small business, known as Camp Contractors,[1] to pose as a fence to buy stolen property. At the office of Camp Contractors, agents and officers bought stolen property from soldiers and civilians. The military purpose behind the operation (sometimes called a "sting") was to recover stolen military property and to apprehend and prosecute the soldiers who had stolen military property. Ultimately, it was hoped that the publicity involving the prosecutions would deter others from stealing and wrongfully selling military property. The operation, entitled "Catch-a-Thief 3", resulted in the apprehension of twenty-one soldiers and fifty-four civilians in May, 1980. The local district at-

[1] The word "Camp" in "Camp Contractors" is an acronym for "civilian and military police."

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

REPLY TO ATTENTION OF

JACS-Z

26 FEB 1982

SUBJECT: Army Claims Program - Policy Letter 82-2

ALL JUDGE ADVOCATES

1. The Army claims program is increasing in size and complexity. Judge advocates at all levels of command must devote sufficient time and personnel resources to insure that the program continues to be responsive to the Army's needs. The proper selection, training and supervision of claims personnel are critical to a successful program.

2. The investigation and processing of serious tort-type incidents require serious attention. Unless those incidents are handled with professional skill, and in accordance with the regulatory requirements (e.g., paragraph 2-4d, AR 27-20), significant financial interests of the Government may be neglected. It is particularly important that the required investigation be conducted personally by an attorney when the claim is in the amount of $5,000 or more.

3. Another important function of any judge advocate office is the payment of claims of service members. Like legal assistance, it is a program where we can have a real impact on the quality of life of the good soldier. We must make certain that personnel claims are settled in a fair and prompt manner. Full use of the small claims procedure will expedite settlement of such claims. Closely related to the settlement of personnel claims is the Government carrier recovery program. This program is essential in that it saves Government funds and it provides an incentive to the carrier industry to exercise care in Government moves.

4. I expect each of you to devote the time and effort required to implement your claims program successfully. Your program will be an item of interest during Article 6, UCMJ inspections.

Hugh J. Clausen

HUGH J. CLAUSEN
Major General, USA
The Judge Advocate General

torney filed forty-seven criminal cases in the civilian courts.[2] The local CID investigated twenty-one military suspects. Of the twenty-one military suspects, nine soldiers were tried by courts-martial[3], three received nonjudicial punishment[4], and two soldiers saw their cases referred to the U.S. Attorney's Office in Denver.[5]

This article will briefly describe the setup and operation of a government fence operation. Primary focus will be on the legal issues present in the prosecution of soldiers who sell military property to an undercover fence operation. Thus, the following examination will discuss the defense of entrapment, violations of the *Posse Comitatus* Act,[6] and the issues of personal and subject-matter jurisdiction.

The Setup

USACIDC should initiate the sting operation. After selecting a location[7] and obtaining approval to videotape[8] all transactions at the fence,

[2] *Authorities Nearly Finish Area "Sting" Operation*, The Colorado Springs Gazette Telegraph, January 14, 1981, § B, at 5.

[3] The author was the trial counsel for eight of the courts-martial.

[4] Article 15, UCMJ, 10 U.S.C. § 815.

[5] Additionally, one soldier received an administrative discharge under Army Reg. No. 635-200, Enlisted Personnel (21 November 1977), chapter 10 [hereinafter cited as AR 635-200]; two soldiers went AWOL (Absent Without Leave); one soldier was not charged; one soldier turned out to be a witness only; one soldier was recommended for a discharge under AR 635-200, Chapter 14; and one soldier's investigative file was forwarded to his new unit in Germany.

[6] 18 U.S.C. § 1835.

[7] In choosing Fort Carson as the location for the fence operation, USACIDC surveyed the routine military police crime reports received from the major Army installations in the United States. This survey revealed which posts suffer the greatest losses in military property due to thefts. Fort Carson placed approximately fifth. USACIDIC next considered if the local commander and civilian authorities would cooperate in the setup and operation of a fence. A briefing team from USACIDC visited the installations to present the concept. After consideration of the value of the property losses and the desires of the local authorities, USACIDC chose Fort Carson.

[8] Army policy prohibits the recording of conversations unless the prior consent of all parties is obtained. Army Reg. No. 600-20, Army Command Policies and Procedures (15 October 1980) para. 5-21*a*, [hereinafter cited in AR 600-20]. Obviously, the suspects would not be asked for their consent. However, this Army policy contained an exception for law enforcement purposes. AR 600-20, para. 5-21*a* and *c*. This exception is promulgated by Army Reg. No. 190-53, Military Police Interception of Wire and Oral Communications for Law Enforcement Purposes (1 November 1978) [hereinafter cited in AR 190-53]. USACIDC therefore could intercept and record certain oral communi-

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USACIDC should arrange for a federal police force to train the agents and officers who will operate the fence. During this training period, USACIDC should task an agent or CID commander to supervise the operation, as well as handle the funds and find a suitable building for the fence.[9] The agents, using USACIDC funds, should then prepare the building for the fence. These actions establishing the fence indicate the military control over the operation.

After the agents finish their preparations in the building, they should publicize the fence. The agents should be directed to "rope-in" suspects without encouraging them to steal property. These roping activities require the agents and the civilian officers to go to local bars and stores to contact persons who might be willing to sell stolen property. During these roping activities, the agents should let it be known that they are available to buy stolen property if someone wants to sell. The agents should be instructed not to encourage anyone to steal property. The agents should offer only an opportunity to a person who wishes to sell.[10] They should not persist in the invitation. By following the instructions, agents will help avoid an accused's successful use of the defense of entrapment.

Since the agents will be posing as civilians,[11] they will not be able to enter most of the clubs and other gathering areas on post. This restriction will severely limit agents' contacts with their principal targets—soldiers. To overcome this limitation, the agents can use two resources: (1) young informants, military or civilian, or (2) military police investigators unknown in the area who can gain entrance into the clubs and barracks to conduct roping activities.[12] Informants must be instructed carefully on what to say to each suspect to avoid allegations of entrapment. Thereafter, soldier-to-soldier contact should adequately spread the information about the availability of the fence.

The Operation

Procedures on conducting the transactions that take place at the fence must be established. The following section will focus on a few procedures designed to avoid allegations of entrapment and allegations of *Posse Comitatus* Act violations.

Before the suspect arrives at the fence, agents should attempt to determine whether he/she is a civilian or a soldier. If the suspect is a civilian, civilian police officers should buy the property. Where suspects are civilians, CID agents should

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cations. AR 190-53, para. 1-4*b*. The intercept, which one agent accomplished with the videotape camera, would be a consensual intercept as one of the parties (the agents) to the communications would consent. AR 190-53, para. 1-4*e*. The intercept must also involve the investigation of a criminal offense punishable under the UCMJ by confinement for one year or more or death. AR 190-53, para 1-4*e*(1). Finally, executive authority, such as the Army General Counsel, had to approve the request. AR 190-53, para 1-6*c*(2). LTC Stephen A. J. Eisenberg discusses AR 190-53 and the procedures to obtain consensual and nonconsensual intercepts in, "Hercules Unchained: A Simplified Approach to Wiretap, Investigate Monitoring, and Eavesdrop Activity," appearing in *The Army Lawyer*, Oct. 1980, at page 1. As the videotapes would be used as evidence at the subsequent prosecutions, it was important to insure that they were obtained in accordance with Army policy to insure their admissibility as evidence. *See generally* United States v. Sturdivant, 9 M.J. 923 (A.C.M.R. 1980).

[9] The establishment of a checking account under the cover name of the fence should prevent the financing of the operation from being traced to the USACIDC. Additionally, the account would be available to pay the routine utility bills of the building and to supply cash for the purchases. Finally, the CID agent should sign the lease for the building using a cover name. These factors become important during the discussion of the effect of the *Posse Comitatus* Act, 18 U.S.C. § 1385.

[10] To help the suspects remember how to call the fence, business cards could be distributed. They should contain the cover name of the fence, address, and telephone number.

[11] At Fort Carson the agents posed as civilian construction workers. They grew beards, long hair, and dressed and acted like construction workers. This cover precluded them from entering the clubs, post exchanges and other areas on post. However, their cover did enable them to make the fence believable and to establish a good rapport with the suspects.

[12] At Fort Carson the agents utilized one paid civilian informant. It was through his efforts, and through the efforts of the soldiers that he contacted, that nearly all of the twenty-one military suspects learned about the fence. Fifteen of the suspects came from the same brigade, and twelve of these from the same battalion. All of these had heard about the fence from the same informant or had a friend who had.

limit their involvement to the operation of the hidden videotape camera or engage in activities to promote the fence as a legitimate business. If the suspect is a soldier selling military property, the CID agents can interact with him. CID agents should deal only with soldiers selling military property. Civilian police officers should control the operation during transactions with civilians. The goal is to avoid the appearance of CID agents enforcing laws against civilians.

To avoid raising the defense of entrapment, agents must be cautious about what is said to a suspect during the transaction. Because agents are operating in an undercover capacity,[13] they are not required to warn a suspect of his rights under Article 31(a)[14] and *United States v. Tempia.*[15] Agents should attempt to elicit the name and incriminating statements from a suspect. Agents should leave the suspect with the impression that they are happy to buy goods and will be available anytime in the future.[16] They must not induce a suspect to steal. Agents should merely offer a suspect the opportunity and location to sell stolen military property.

The Prosecution

Many potential legal issues and problems can arise during the prosecution of suspects identified during the fencing operation. At the court-martial, trial counsel may find it difficult to prove the value of an item such as a PRC–77 radio,[17] or prove that a mountain sleeping bag is military property of the United States, when an identical sleeping bag can be purchased at a local Army surplus store.[18] With a little forethought trial counsel can overcome these problems.

A typical fence operation can present difficult legal issues. Among the most difficult are the issues of personal jurisdiction, subject-matter jurisdiction, the *Posse Comitatus* Act, and the affirmative defense of entrapment.

Personal Jurisdiction

Due to the usual long duration of a fence operation, a court-martial may lose personal jurisdiction over a military suspect. The issue will arise if a suspect is discharged after his involvement with the fence. The source of this issue is the operation of Article 3(a).[19] In essence, Article 3(a) states that if a soldier commits an offense against the UCMJ,[20] a court-martial has jurisdiction to try the soldier if the offense is punishable by confinement of five years or more and the accused cannot be tried in a federal or state court, even if the soldier has been discharged from the service. However, the United States Supreme Court, in

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[13] *See* United States v. Gibson, 14 C.M.R. 164 (C.M.A. 1954), United States v. Duga, 10 M.J. 206 (C.M.A. 1981), and United States v. Hoffa, 385 U.S. 293, 87 S. Ct. 408 (1966).

[14] Article 31(a), UCMJ, 10 U.S.C. § 813(a).

[15] 37 C.M.R. 249 (C.M.A. 1967).

[16] The agents at Camp Contractors usually paid approximately ten per cent of the value of the military property.

[17] If the defense will not stipulate to the value of an item, the trial counsel has several choices. He can produce the testimony of soldier who is qualified to state the value of an item or he can request that the military judge, under Military Rule of Evidence 201, take judicial notice of the price lists contained in the microfiche Army Master Data File (AMDF) of Supply Bulletin 700–20.

[18] To establish that what looks like an U.S. Army mountain sleeping bag *is* an U.S. Army sleeping bag may be difficult. There are many methods. The accused may have admitted on the videotape that it is an Army sleeping bag or he may have made a statement or a partial confession to establish it. The trial counsel may use, along with other circumstantial evidence, an inference contained in paragraph 187*c*, *Manual for Courts-Martial, United States,* 1969 (Rev. ed.), that the sleeping bag is military property. A soldier qualified to identify military property should testify initially that the property is the type issued for use in military. Finally, the trial counsel may be able to establish a chain of relationships to show that the sleeping was in the Army inventory at the post Central Issue Facility, was issued to a certain soldier, was stolen from that soldier by the accused or an accomplice, was sold to a CID agent at the fence, and can now be identified by the same CID agent at the court-martial.

[19] Article 3(a), UCMJ, 10 U.S.C. § 803(a), provides that "...no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this Chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or a State, Territory or the District of Columbia, may be relieved of amendability to trial by court-martial by reasons of the termination of that status."

[20] 10 U.S.C. § 801–940.

Toth v. Quarles,[21] held, on constitutional grounds, that Article 3(a) does not extend court-martial jurisdiction over persons who have been discharged from the service, even though they were servicemembers when they committed the offense. Additionally, the operation of Article 3(a) itself often negates the jurisdiction of a court-martial for the offenses arising from the typical fence operation. For Article 3(a) to grant jurisdiction to the court-martial requires that the offense be punishable for five years or more. As larceny[22], wrongful sale of military property[23], and conspiring[24] to commit either offense are the normal charges resulting from a fence operation, each specification must allege a property value of more than $100.00 to provide for confinement for five years.[25] If the alleged value is less than $100.00, the operation of Article 3(a) will prohibit the court-martial of the discharged soldier for that offense. Article 3(a) also requries that the suspect not be within the jurisdiction of a federal or state court. As violations of the UCMJ are also violations of federal law,[26] the federal courts have jurisdiction over offenses committed in the United States and some extraterritorial offenses.[27] State law also prohibits larceny and the sale of stolen property.[28] Thus, a state court could try a suspect, except for offenses occurring in an area of exclusive federal jurisdiction.[29] A court-martial would not have personal jurisdiction over a suspect who has been discharged, since he/she can be tried in a civilian court.

If a suspect reenlists, he/she may be subject to the jurisdiction of a court-martial.[30] However, Article 3(a) may prohibit a court-martial due to a lack of personal jurisdiction.[31] *United States v. Ginyard*[32] states: "Once an enlisted man has been discharged from the armed forces, that discharge operates as a bar to subsequent trial for offenses occurring prior to discharge, except in those situations expressly saved by Article 3(a). . . ." The decision in *United States v. Justice*,[33] reinforces the rule that the court-martial losses jurisdiction over the accused unless the offense is punishable by five years or more and is not triable in an American civilian court.[34] If an undercover fence operation operates only in the United States, a civilian court will always have jurisdiction over an accused. If the fence operates overseas and an appropriate federal criminal statute has extraterritorial effects, a federal court will have jurisdiction over the accused. The accused's discharge, regardless of reenlistment, will bar jurisdiction of a court-martial. However, in an overseas fence operation where a federal statute does not have extraterritorial effect, a court-martial will have jurisdiction under Article 3(a), since a U.S. civilian court will not have jurisdiction.

The Article 3(a) bar to prosecution may arise due to the length of the undercover fence operation, as well as the secrecy surrounding it. Can it

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[21] 350 U.S. 11, 76 S. Ct. 1, 100 L.Ed 8 (1955).

[22] Article 121, UCMJ, 10 U.S.C. § 921.

[23] Article 108, UCMJ, 10 U.S.C. § 908.

[24] Article 81, UCMJ, 10 U.S.C. § 881.

[25] Table of Maximum Punishments, Para. 127*c*, Section A, *Manual for Courts-Martial, United States*, 1969 (Rev. ed.) [hereinafter cited as MCM].

[26] The UCMJ's punitive articles are codified at 10 U.S.C. § 877-934.

[27] A few offenses, such as larceny of U.S. property, have extraterritorial effect. *See generally* United States v. Lazzaro, 2 M.J. 76 (C.M.A. 1976).

[28] For example, see Colorado Revised Statutes (1973) 18-4-401, Theft.

[29] *See, e.g.*, 18 U.S.C. § 113, Assault; 19 U.S.C. § 7, Special Maritime and Territorial Jurisdiction of the United States Defined; and United States v. Blount, 558 F.2d 1245 (5th Cir. 1977), to understand a prosecution arising out of an incident on an area of exclusive federal jurisdiction.

[30] United States v. Gallagher, 22 C.M.R. 296 (C.M.A. 1957), and United States v. Martin, 28 C.M.R. 202 (C.M.A. 1959). However, Untied States v. Winton, 35 C.M.R. 194 (C.M.A. 1965), indicates that Article 3(a) will not confer jurisdiction upon the court-martial for the soldier who reenlists unless both of the requirements of Article 3(a) are met.

[31] United States v. Ginyard, 37 C.M.R. 132 (C.M.A. 1967).

[32] *Id.* at 37 C.M.R. 136.

[33] 2 M.J. 344 (A.F.C.M.R. 1976).

[34] The Judge Advocate General has certified for review the *Ginyard* rule in United States v. Clardy, 10 M.J. 121 (1980). The Court of Military Appeals heard arguments on 16 February 1982.

be avoided? One possibility is to require the post reenlistment staff ot notify a contact in the post CID office of the name of each soldier who desires to reenlist. CID could then determine if the soldier seeking reenlistment is a suspect in a case pending. If he is a suspect, his reenlistment could be postponed. This tactic would only succeed if the day of the proposed reenlistment could be delayed until after the scheduled closing of the fence. Then charges should be promptly brought against the suspects. Another solution would be to immediately prefer charges against a soldier who is due to be discharged and who desires to reenlist. The apparent drawback to this tactic is that the soldier will learn the true nature of the fence. He could then relay this knowledge to his friends and accomplices. The best solution is the prosecution of the discharged or reenlisted soldier by the civilian authorities. The fence can run to completion. The U.S. Attorney or the state district attorney can then bring the accused to trial.

Subject-Matter Jurisdiction

Additionally, a court-martial must acquire subject-matter jurisdiction over the offenses. Subject matter jurisdiction attaches only to offenses that are "service-connected."[35] Service-connection is usually established by the court's analysis of twelve factors enumerated in *Relford v. Commandant;*[36] hence, these factors are known as the *Relford* factors. The analysis of the *Relford* factors will determine if the court-martial has subject-matter jurisdiction over the offense of wrongful sale of military property, which will be the principal charge arising out of the fence operation.[37]

Many of the facts of an undercover fence operation should support a finding of jurisdiction. A soldier has a duty to safeguard government property; his wrongful possession of stolen property violates this duty.[38] Often, a soldier in possession of stolen property is presumed to be a thief. The suspect usually will have stolen the property at a military installation. Thus, the suspect's military status enables him to be a post and to have access to government property.[39] Additionally, the suspect may associate with one or more accomplices from his unit.[40] If, on post, soldier and his

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[35] O'Callahan v. Parker, 395 U.S. 256, 89 S. Ct. 1683 (1969).

[36] 401 U.S. 355, 91 S. Ct. 649 (1971). The *Relford* factors are:

(1) Serviceman's proper absence from the base.
(2) The crime's commission away from the base.
(3) Its commission at a place not under military control.
(4) Its commission within our territorial limits and not in an occupied zone of a foreign country.
(5) Its commission in peacetime and being unrelated to authority stemming from the war power.
(6) The absence of an connection between the defendant's military duties and the crime.
(7) The victim's not being engaged in the performance of any duty relating to the military.
(8) The presence and availability of a civilian court in which the case can be prosecuted.
(9) The absence of any flouting of military authority.
(10) The absence of any threat to any military post.
(11) The absence of any violation of military property.
(12) The offenses being among those traditionally prosecuted in civilian courts.

Another approach often used concurrently with the analysis of the *Relford* factors involves the analysis of three criteria stated in Schlesinger v. Councilman, 420 U.S. 738, 95 S. Ct. 1300 (1975). These criteria are:

(a) "Gauging the impact of an offense on military discipline and effectiveness";

(b) "On determining whether the military interest in deterring the offense is distinct and greater than that of civilian society"; and

(c) "Whether the distinct military interest can be vindicated adequately in civilian courts."

[37] United States v. Alef, 3 M.J. 414 (C.M.A. 1977), requires that the jurisdictional basis of an offense be alleged in the specification. What kind of jurisdictional basis must be alleged? In *Alef*, at p. 418, the court stated, "In the absence of such indictment [that is, words alleging the jurisdictional basis] the defense is not truly on *notice* of what jurisdictional basis." Thus, the jurisdictional language need only give the defense *notice*. Another alternative, however, is to list each of the *Relford* factors that will be relied upon to show jurisdiction.

[38] United States v. Regan, 7 M.J. 600 (N.C.M.R. 1979).

[39] United States v. Moore, 1 M.J. 448 (C.M.A. 1976), and United States v. Pollack, 7 M.J. 627 (A.F.C.M.R. 1979), *pet. denied* 7 M.J. 376 (C.M.A. 1979).

[40] When an offense is committed in the presence of and with the involvement of another servicemember, the exercise of military jurisdiction is especially appropriate. United States v. Sprague, 1 M.J. 858 (A.F.C.M.R. 1976), and United States

accomplices formulate an intent to sell stolen government property, or if the suspect telephones from post to arrange a sale to the fence, factors favoring military jurisdiction are increased.[41] Flouting of military authority occurs when property is taken from a military post to be disposed of at an off-post location.[42] The wrongful sale of military property taken from post lessens the ability of the units on post to perform their mission. Additionally, the theft of property on post poses a threat to the security of the post.[43] The wrongful sale of military property takes place at a building leased by the USACIDC. Thus, the military has a leasehold interest, and, as a tenant, has control over access into the building.[44] If a soldier comes to the fence during normal duty hours,[45] this fact should also be considered. The victim of the wrongful sale is the U.S. Army. The U.S. Army is engaged in the performance of military duty, which includes a duty to safeguard and account for property.[46]

Though the offense of wrongful sale of military property can be prosecuted in a federal or state court, it should be determined if the U.S. Attorney and the state district attorney are willing to prosecute. In many cases, due to heavy workload and lack of interest, officials do not desire to prosecute cases involving only soldiers and military property. Civilian officials, at their discretion, may refuse to prosecute.[47]

When a court analyzes the facts present in a fence operation, the decision should result in a finding of service-connection. Recently, in *United States v. Trottier*,[48] the Court of Military Appeals opined that many off-post drug sales to servicemembers are service-connected since the sales have an effect on the mission of the military. A loss of military property, whether used by a soldier or a unit, has an effect on the military mission. Therefore, by analogy with *Trottier*, any wrongful sale of military property should lead to a finding of service-connection.

The Posse Comitatus Act

An undercover fence operation is often conducted off-post, thus necessarily involving local civil authorities. Such interaction between the military and civil authorities often leads to assertions that the *Posse Comitatus* Act[49] (hereinafter referred to as the Act) has been violated. A violation of the Act is a crime. Thus, the Act "where it is applicable, renders the transgressor liable to criminal penalties, but does *not* provide that 'the criminal is to go free because the constable has blundered.'"[50] However, in *People v. Burden*[51] (subsequently reversed), after finding

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v. Graham, 9 M.J. 556 (N.C.M.R. 1980). *But see* United States v. Conn, 6 M.J. 351 (C.M.A. 1979).

[41] United States v. Strangstalien, 7 M.J. 225 (C.M.A. 1979), and United States v. Hardin, 7 M.J. 399 (C.M.A. 1979), discuss the formation of an intent on post.

[42] United States v. Ross, 9 M.J. 726 (A.C.M.R. 1980).

[43] *Id.*

[44] In *Alef*, at 3 M.J. 417, the court finds the offense occurred at a parking lot behind a lounge in the city, and states that this area "was clearly not within military control." The lease of the fence building shows some degree of military control, and thus the offense of wrongful sale would not take place in an area that "was clearly not within military control."

[45] United States v. Dixon, 2 C.M.R. 823 (A.F.B.R. 1952), indicates that duty hours do not include the entire day but are limited to the hours that the soldiers should be at work.

[46] United States v. Regan, 7 M.J. 600 (N.C.M.R. 1952), and United States v. Corley, 5 M.J. 558 (A.C.M.R. 1978).

[47] United States v. McCarthy, 2 M.J. 26 (C.M.A. 1976).

[48] 9 M.J. 337 (C.M.A. 1980).

[49] 18 U.S.C. §1385. "Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, wilfully uses any part of the Army or Air Force as *posse comitatus* or otherwise to execute the laws shall be fined not more than $10,000 or imprisoned not more than two years, or both." Chapter 18, Military Cooperation with Civilian Law Enforcement Authorities, of the Department of Defense Authorization of 1982, at 95 Stat. 1114 *et seq.*, 10 U.S.C. §371 *et seq.*, clarified the Act to facilitate the provision of information, equipment and training to Federal and local civilian law enforcement agencies by the Defense Department. However, the basic provision of the *Posse Comitatus* Act on the direct participation of military personnel in law enforcement activities remain effective.

[50] United States v. Walden, 490 F.2d 372, 376 (4th Cir. 1974), *cert. denied*, 416 U.S. 938, 94 S. Ct. 2385 (1974). However, there is no record of any criminal prosecution under the Act.

[51] 94 Mich. App. 209, 288 N.W.2d 392 (1979), reversed at 411 Mich. 56 (1981).

a violation of the Act, the Court fashioned the remedy of excluding the evidence. Though many courts have discussed this extraordinary remedy, none have utilized it.[52] The defense may, however, by means of a motion to supress or a motion to dismiss,[53] try to use the Act to obtain some relief for the accused.

The defense must establish a violation of the *Posse Comitatus* Act. The claim that the Act has been violated during a wrongful sale of military property to a CID agent by the soldier should not be successful. The Act contains an exception clause to show that it does not apply "in cases and under circumstances expressly authorized by the Constitution or Act of Congress." The prosecution of a soldier under the UCMJ, which is an Act of Congress, is within the exception.[54] Therefore, only a transaction with a civilian suspect could potentially violate the Act.

If CID agents are able to avoid active participation in deals with civilian suspects, the defense may turn to the control and preparation of the fence operation by USACIDC to establish a violation. If CID agents did deal with a civilian, the defense can use this fact.[55] Essentially, the defense may seek to show an overriding military control of the operation. What effect would this have on a court-martial? In *United States v. Brown*,[56] the court held: "Where a primary military purpose is the motivation in using Armed Forces personnel, no violation occurs from the incidential enforcement of civilian law".[57] In *Brown*, the court found no indication that the involvement of military personnel was motivated by a desire to aid in the execution of civilian law. Their purpose was to prohibit crime involving servicemembers. Military personnel investigated military personnel, while the civilian police dealt with the civilians. Thus, no violation of the *Posse Comitatus* Act should be found at a court-martial if the fence operation is run correctly.

Entrapment

Entrapment[58] is an affirmative defense. It is

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[52] *See generally* State v. Denko, 219 Kan 490, 548 P.2d 819 (1976); State v. Nelson, 260 S.E.2d 629 (N.C. 1979); and United States v. Wolffs, 594 F.2d 77 (5th Cir. 1979).

[53] *See generally* Jackson v. State, 572 P.2d 87 (Alaska 1977).

[54] Furman, *Restriction Upon Use of the Army Imposed by the Posse Comitatus Act*, 7 Mil. L. Rev. 85, 104 (1960). In a more recent article on the Act, Major Clarence I. Meeks III stated that the UCMJ, "as the statutory basis for the military discipline system, can properly be viewed as an exception to the *Posse Comitatus* Act." Meeks, *Illegal Law Enforcement: Aiding Civil Authorities in Violation of the Posse comitatus Act*, 70 Mil. L. Rev. 83, 104 (1975).

[55] The defense may successfully establish a violation of the Act based on a group of cases arising out of the incident at Wounded Knee. *See generally* United States v. Jaramillo, 380 F. Supp. 1375 (D. Neb. 1974), *appeal dismissed*, 510 F.2d 808 (8th Cir. 1975); United States v. Banks-Means, 383 F. Supp. 368 (D.S.D. 1974); United States v. Red Feather, 392 F. Supp. 916 (D.S.D. 1975); and United States v. McArthur, 419 F. Supp. 186 (D. N.D. 1975), *aff'd* 541 F.2d 1275 (8th Cir. 1976), *cert. denied sub nom* Casper v. United States, 430 U.S. 970, 97 S. Ct. 1654 (1977). In *Jaramillo* and *Banks-Means*, the court found that the *active* assistance rendered by two Army officers to other federal police authorities at Wounded Knee was a violation of the Act. But *Red Feather* and *McArthur* found no violations. However, in *Jaramillo* and *Banks-Means*, the court did not fashion a remedy of suppression of the evidence. The court did rule that the violation of the Act negated the lawfulness of the other federal police actions. Thus, the defendants could not be convicted for an obstruction of justice charge, as the element of the lawfulness of the officers' action had been negated. Whether a violation of the Act is found depends upon what standard the court will use to analyze the facts. An opinion of The Judge Advocate General (DAJA-AL 1976/3913) indicates that the Army will follow the "active-passive" test enunciated in *United States v. Red Feather*.

[56] 9 M.J. 666 (N.C.M.R. 1980).

[57] 9 M.J. 666,668 (N.C.M.R. 1980). In the cases arising out of the undercover fence operation at Fort Carson, the issue of the Act was not raised on appeal. *See* United States v. Cooley, C.M. 440064 (A.C.M.R. 19 Nov 80) (unpublished); United States v. Jenkins, C.M. 440113 (A.C.M.R. 30 June 81)(unpublished); United States v. Hutt, C.M. 440107 (A.C.M.R. 24 Apr 81)(unpublished); United States v. Mitchell, C.M. 15394 (A.C.M.R. 19 June 81)(unpublished); and United States v. Groves, C.M. 440213, (A.C.M.R. 30 Sep 81) (unpublished). Neither was the issue of subject-matter jurisdiction.

[58] Paragraph 215e, *MCM*, states: "Entrapment is a defense which exists when the criminal design originates with government agents, or person cooperating with them, and they implant in the mind of an innocent person the disposition to commit the alleged offense and thus induce its commission . . . . the fact that persons acting for the government merely afford opportunities or facilities for commission of the offense does not constitute entrapment."

normally not available to one who denies commission of the offense.[59] Entrapment may be raised as a defense by soldiers who sell stolen military property to the fence. These soldiers try to establish that their contacts with the CID agents or their informants during the conduct of the roping activities caused them to commit the crime. Therefore, before the CID agents, civilian police officers, or their informants begin their roping activities, it is essential that they be instructed regarding entrapment. They should be told not to encourage a suspect to steal property. Because the fence is established to give soldiers the opportunity to sell stolen property, agents should keep their conversations with the suspects limited to offering soldiers that opportunity. Normally, an offer to buy stolen property should be made to suspects only once.

To claim entrapment successfully, an accused must show that his will to be law-abiding has been overborne by a government agent's inducement to commit the offense.[60]

> The general principle is that the Government should not be able to punish criminally a person who was a law-abiding mind before the Government won his conversion to crime. On the other hand, it may punish the criminal who stands ready commit an offense when presented with an appropriate opportunity. In other words, a distinction is drawn between the criminal, whose hesitation is born of wariness, and the innocent, whose conscience is overborne by government importuning.[61]

Thus, the focus of the defense is upon the accused, and the essential inquiry is upon the accused's predisposition to commit the crime. To determine the accused's predisposition is difficult. Normally, circumstantial evidence must be examined. Two areas which negate the defense of entrapment are usually present in a fence operation. First, a profit motive may foreclose the defense.[62] During the sting operation, soldiers will sell military property for cash. They want to make money. Second, the entrapment defense does not normally exist when the accused has responded immediately and positively to an informant's invitation to buy stolen government property.[63] If the informant made only one contact with the soldier, who then proceeded to deal with the fence, the successful use of entrapment does not appear likely. If an informant makes repeated efforts to convince a soldier to deal with the fence, entrapment has a greater chance of success.

Conclusion

The successful prosecution of soldiers who sell stolen military property to an undercover fence operation depends on the setup and operation of the sting from its inception. The personnel at the fence must carefully follow instructions from USACIDC, especially in the conduct of their roping activities. The conduct of the agents who follow their instructions will forestall the successful use of the defense of entrapment and potential defense remedies based on violations of the *Posse Comitatus* Act. The criminal conduct of the military suspects will allow the court-martial to obtain subject-matter jurisdiction.

The inability of the court-martial to obtain personal jurisdiction over discharged soldiers and soldiers who have reenlisted after their discharge is a major problem. One solution involves the setup of procedures to identify a suspect and to prevent the discharge of that suspect. However, this solution would jeopardize the continuance of the fence. Another solution requires that military au-

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[59] United States v. McGlenn, 24 C.M.R. 96 (C.M.A. 1957), states that one who denies the commission of an offense cannot avail himself at the defense of entrapment. However, in United States v. Garcia, 1 M.J. 26 (C.MA. 1975), the court was presented with the issue of whether entrapment and alibi were antithetical defenses, and thus mutually exclusive. It ruled that these two defenses may be alternatives as disbelief of one does not necessarily disprove the other.

[60] United States v. Russell, 411 U.S. 423, 93 S. Ct. 1637 (1973).

[61] United States v. Black, 8 M.J. 843, 846 (A.C.M.R. 1980), *pet denied* 9 M.J. 253 (C.M.A. 1980).

[62] United States v. Hebert, 1 M.J. 84 (C.M.A. 1975).

[63] United States v. Suter, 45 C.M.R. 284 (C.M.A. 1972); and United States v. Garcia, 1 M.J. 26 (C.M.A. 1975).

thorities convince the local civilian officials to prosecute these suspects. Whether this solution will be practicable depends on the relationship between the military authorities and the civilian officials. All the accused must be prosecuted in order to have a successful operation.

Practical Training in the Law of War: Team Spirit—82 Exercise

by Major Eugene D. Fryer, Deputy Judge Advocate, Combined Field Army, Camp Red Cloud, Korea

Perhaps the most critical and demanding legal service to a commander and staff during armed conflict is the provision of legal advice on the conduct of combat operations. This service is critical because combat law advisers at many levels must assist in decisions which touch upon the national interest, prestige and morale, upon service discipline, and upon successful and professional mission accomplishment. This legal service is demanding in the sense that the combat law adviser, whether serving at the policy level or at the tactical level, pursues the practice through the most diversified authorities and resource material. This adviser must resort not only to the treaty and customary sources of the law of war, but also to national policy and service directives. Where military operations are conducted by alliance or coalition, the combat law adviser also must know the terms of reference for these arrangements and the national policies and legal orientation of the ally. The combat law adviser must have a working familiarity with the actual operations plans and contingency plans within which military operations are carried out, with the more detailed rules of engagement, and commander's guides according to which the combat mission ultimately is executed—by which firepower actually is employed. Moreover, the combat law adviser must be conversant with the mechanics of the client's job, with the legally tinged problems inherent in the commander's combat mission, with the physical considerations of terrain, with opposing force order of battle, with friendly command and control, and with the security, communications and psychological warfare aspects of combat operations.

The "legal sufficiency" of combat operations is best assured by prospective, preventive legal service: through training, through advance legal review of operations plans and rules of engagement and through close intermesh and communication by the judge advocate with the operations staff. These points, in any event, are core to the US policy of full compliance with the law of war and are detailed in DOD Directive 5100.77 and in implementing service regulations. These directives mandate that commanders and individual combatants of all ranks and disciplines have a practical working knowledge of the application of the law of war to their combat function.

Experience has shown that the most effective means by which this many-sided preventive legal service may be delivered is through military exercise. Exercise is the most practical form of preparation for performance. Exercise planning is a reflection of real-world operational planning. Difficulties encountered during exercise play and their solution are a reflection of real-world performance. Post exercise adjustments, based on lessons learned during the exercise, tighten command procedures and capabilities for improved real-world effectiveness. Moreover, exercise of the law of war has the advantage of palpably demonstrating to the player that law of war standards are no impediment to effective mission accomplishment. Through exercise, law of war teaching points are more credible and retainable to the user since they are related to practical military interests.

Because of what may be called a "halo effect," the exercise medium is as much or more effective than other forms in reaching the broadest spectrum of the command. The halo effect is a multiplier phenomenon. Alerted that a subject, in this case of law of war, will be the special focus of command interest, all exercising elements and individuals will prepare in advance to demonstrate proficiency in this area, even though only a few actually can be touched by the exercise scenarios.

Scenario play ideally becomes a form of random verification of the conventional training which is quietly and uniformly going on throughout the command. Pre-exercise preparation naturally will generate unit requests for lecture training and for training literature on the law of war. Together with its reaffirmation through exercise, all these forms of infusive training, along with plans review, should form the core of the practical training called for by service law of war directives.

Team Spirit is a unique and ideal setting for bringing about this training infusion and for habituating the operations staff to close judge advocate support. Team Spirit exercise furthermore will demonstrate that the judge advocate has an indisputable need for direct access to the commander to provide personal legal advice on the full array of unpredictable and highly discretionary combat decisions. Team Spirit is a field training exercise (FTX), clearly distinguishable from command post exercises (CPX) such as the annual Ulchi Focus Lens in Korea. Team Spirit annually exercises combat forces through actual maneuver and encounter. For Team Spirit–82 there is no dead hand of control imposed by a master sequence of events list (MSEL). This exercise is intentionally designed to accentuate small unit initiative. It is a free play exercise, as approximate to the flux of combat as possible.

An FTX, such as Team Spirit–82, therefore is more apt for testing small unit and individual law of war proficiency than would CPX or other strategic or policy level simulation. Team Spirit is a unique training opportunity because in addition to being a combined arms exercise, it also is an integrated bi-national effort. Republic of Korea (ROK) and US forces exercise side-by-side, united at the top in the combined command structure of the ROK/US Combined Forces Command (CFC), which is responsible for the real-world defense of the Republic of Korea. CFC will marshal over 157,000 ROK/US forces for the 1982 exercise, a greater number than assemble for any other free world exercise. From 26 March through 2 April 1982, two field army equivalents maneuvered on the ground while combined air forces delivered tactical and strategic air support. Combined ROK/US naval forces engaged in blue water and territorial water naval maneuver including mine laying, clearing, and salvage operations. Combined marine forces luanched and defended against amphibious operations, and a combined unconventional warfare task force exercised the spectrum of unconventional and special warfare missions. All of this play was actual, not simulated or notional. This is the ideal setting for realistic, mission-related law of war training.

Productive law of war play was assured for Team Spirit–82 since the subject, among a handful of others, specifically was mandated by the CINC, CFC, for training. This command interest is the pay-off for years of judge advocate persistence in benignly demonstrating the commonsense value of law of war proficiency through Team Spirit and through other exercises. For 1982, judge advocate contribution to exercise formulation, play and evaluation was assured by cold print in the exercise plan. Additionally, the judge advocate structure necessary for controlling and evaluating the extensive law of war field play was formally established by the exercise plan.

The judge advocate exercise structure consisted of headquarters oversight by the Office of Judge Advocate, ROK/US CFC. As with other CFC staff sections, this small office combines ROK and US judge advocates, the CFC Judge Advocate position being staffed by an ROK judge advocate, the deputy position being held by an American. This office prescribes the policy and procedures for law of war exercises and is responsible for preapration and submission of the Judge Advocate after-action report to CINC, CFC. Also in keeping with CFC policy, combined policy and procedures for Team Spirit–82 were derived through consultation by JA, CFC, with national component and service judge advocates. This coordinative task was both streamlined and complicated by the multi-hatting of individual judge advocates, who also represented specialized interests, such as the United States Command.

The deployable field mechanism for the control and evaluation of Team Spirit–82 law of war play was the Law of War Special Evaluation Team (SET), also established by CINC, CFC. The

SET, which consisted of one ROK and US judge advocate, moved together throughout the exercise areas during the maneuver period, overseeing the work of three subordinate mobile judge advocate control and evalution teams. These teams are USAR JAG international law teams, deploying three judge advocates, one warrant officer, and two enlisted members. Each team had been schooled in the concept and mechanics of law of war exercise through intensive resident and non-resident instruction by the International Law Division of The Judge Advocate General's School, Army, Charlottesville, Virginia. Several of the individual reservists possessed valuable experience in law of war exercising. All of the reservists are deployable for real-world law of war field duty similar to that which they encountered in Team Spirit–82, and indeed are the Army Judge Advocate General's Corps in-depth pool of law of war experts in the event of mobilization.

During Team Spirit–82 each of these international law teams focused its control and evaluation efforts on one delimited area of the law of war. One team inquired throughout the exercise into whether organic exercising judge advocates effectively deliver law of war services as envisioned under national law of war program directives. They were concerned with judge advocate law of war knowledge, judge advocate familiarity with law of war needs and problems of the command, and judge advocate proximity and access to the commander, operations staff, and to operations data. Another team will monitor law of war questions generated by the extensive prisoner of war play which was programmed for Team Spirit–82. The third team will insert law of war scenarios for play by organic exercising ROK/US judge advocates and by command and staff, and will evaluate player response. A similar, multitiered play, control and evaluation matrix was employed by exercising Air Force, Navy and Marine Corps judge advocates, with the manning of the matrix governed by the scale of operations and by physical factors, such as exercise dispersion.

The free-play, uncontrolled character of Team Spirit–82 raised both problems and advantages for scenario construction. Exercise guidelines dictated that all exercise activity, particularly the gound segment, be actual, tangible, and physical, not simulated or notional. If, for example, a prisoner of war or targeting issue was raised for its legal content, it had to be based on an actual, physical transaction. Scenarior construction was by no means a unilateral judge advocate undertaking. Each scenario was tailored to existing exercise play with the help of the technical operations expert. This not only insured accuracy and realism, but enlisted the enthusiasm of the operaitons staff. Close staff coordination at the formulative stage produces law of war scenarios in which the several concerned staff elements had a mutual stake. Involving the staff elements created a proprietary interest in the scenarios and guaranteed against the by-passing of law of war scenarios on exercise day. Law of war training through exercise scenarios was an appealing proposition to exercise planners; they appreciated that the law of war training could be discharged alongside operational training at little extra expense and with little diversion of resources.

In retrospect, a problem for the judge advocate does lie in the free flow character of the exercise which pits benighted judge advocates against small unit leaders in demonstrations of proficiency in day and night map reading, radio communications and mobility. Additionally, though the scenarios were drafted with the cheerful help of the operations staff, conflict did occur over simple considerations of time and place. Thanks to command law of war interest, however, law of war was not overshadowed by competing priorities. On reflection, however, the exercise tensions which did exist were no keener than those tensions the supporting combat law adviser would encounter in actual operations. These exercise tensions enhanced the reality of law of war training both for the trainee and for the trainer, and made all the more convincing the case that the judge advocate requires direct proximity and access to the commander and operations staff during actual operations.

Final mention is reserved for the prominent subject of exercise after-action reporting. As in

all training, exercise training is structured according to the essential training objectives of the command. The trainer trains toward these objectives. This means that the profile, if not the contents, of the after-action report can be discerned in advance. If the judge advocate knows through familiarity the gray areas posed for his command by the law of war, he or she can tailor scenarios to produce the type of after-action report and recommendations which will remedy these tender spots and result in enhanced mission effectiveness. Such instrumental, ends-orientation means that scenarios themes are few in number, and are repetitively played across the combined arms family. Thus, a thematic and statistically significant picture of the law of war health of the command can be presented to the commander to shape future training, management and command programs. This is by no means an ulterior or self-fulfilling form of training, but is the very sort of preventive law that sensitive legal advisers would pursue across all legal disciplines.

Department of Justice Interpretation of 18 U.S.C. §281*

Administrative Law Division, OTJAG

The office of The Judge Advocate General has recently received new guidance from the Department of Justice (DOJ) clarifying its position on the scope and enforceability of 18 USC §281.

In essence, DOJ was asked (1) whether and under what circumstances the Department would prosecute an alleged violation of 18 USC 281; (2) whether that statute's prohibitions apply only to retired officers on active duty or to those not on active duty as well; and (3) whether its prohibitions are regarded as extending to the sale of services as well as the sale of goods.

In response to the first question, the Department of Justice took the position that the statute is presently in force and properly denotes a Federal crime. It was pointed out that while prosecution would not ordinarily be undertaken in the absence of evidence of venal conduct and while most of the matters involving the statute can be effectively dealt with administratively, an aggravated case could warrant criminal prosecution.

As to the second question, DOJ stated that the prohibitions of the first paragraph of 18 USC §281 apply in full force *only* to active duty retired officers, but, under its second paragraph, retired officers not on active duty are prohibited from representing any person in the sale of anything to the Government through the department in whose service he holds a retired status.

Lastly, and in response to the third question, DOJ expressed the view that the second sentence of the second paragraph of 18 USC §281 prohibits a retired officer from selling services, as well as goods, to his former department when he is representing someone other than himself.

It should be noted that DOJ's opinion on 18 USC 281 modifies the advice concerning this statute which is contained in paragraph 3–1d of the "Reference Guide to Prohibited Activities of Military and Former Military Personnel," DAJA–AL 1981/3666, 16 September 1981.

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*Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court-martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by Act of Congress. 18 USC §281.

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

1. (Line of Duty) *Self-Inflicted Injuries Incurred By Servicemember While Mentally Unsound Were Incurred In Line Of Duty; Mental Condition a Medical Determination. DAJA-AL 1981/3611 (10 September 1981).*

The Adjutant General requested a legal opinion as to whether a psychiatric opinion stating that the servicemember was mentally unsound at the time of his injury was sufficient to sustain a finding that his injuries were incurred in the line of duty. On 13 November 1980, the servicemember shot himself with an M-16 in an apparent suicide attempt. The initial psychiatric examination disclosed that the SM was not of sound mind and, based on that opinion and Rule 10, Appendix AR 600-33, the LOD investigating officer determined that the injuries were incurred in the line of duty. The initial psychiatric determination was concurred in by the Office of The Surgeon General.

TJAG stated that a determination of an individual's mental condition is a medical one, and beyond the purview of legal review. As the medical determination was that the SM was "temporarily of unsound mind" at the time of the attempted suicide, TJAG stated that the resulting injury was properly characterized as being incurred in line of duty.

2. (Line of Duty) *Determination By Police Officers That SM Was Driver Of Vehicle Not Overcome By Sufficient Credible Evidence, Thus Finding Of NLOD-DOM Proper. DAJA-AL 1981/2109 (13 February 1981).*

The Adjutant General requested the opinion of The Judge Advocate General as to whether the determination by the LOD investigating officer that the SM was the driver of the vehicle in question was supported by the evidence available. On 30 May 1980, the SM and two others were injured when their vehicle left the road, throwing all SM's from the vehicle. The investigating Highway Patrol officer concluded that the SM was the driver based on information obtained at the hospital from another SM who was in the vehicle. In addition, an MP stated that he had interviewed the other two SM's at the accident scene and both stated that the SM was the driver. (Both these individuals subsequently stated they "could not remember" who was the driver.)

Based upon the available information, the hospital authorities administered a BAT to the SM which resulted in a finding of 2.4 mg of alcohol per ml of blood. This finding was used to support the LOD investigating officer's determination that the SM was under the influence and, coupled with the evidence of the Highway Patrolman and the MP, resulted in a LOD finding of NLOD-DOM.

In a previous opinion, TJAG had held that where the evidence does not establish that a certain individual was the driver of a vehicle involved in an accident in which the individual was injured, the presumption of LOD prevails; that there must be substantial evidence that the SM held responsible as the driver was in fact driving; and that where the facts are unknown, clouded, or in irreconcilable conflict, the presumption of LOD must prevail. In this case, however, TJAG stated that the statements made by the other two SM's contemporaneously with the accident and the conclusions of the investigating police officers based thereon are more persuasive than the inconclusive conflicting statements made months later. Accordingly, TJAG stated that the finding of NLOD-DOM was proper.

Legal Assistance Items

Major Joel R. Alvarey, Major Walter B. Huffman, Major John F. Joyce, Major Harlan M. Heffelfinger, and Captain Timothy J. Grendell

Administrative and Civil Law Division, TJAGSA

All States Guides

The *All States Will Guide, All States Guide to Garnishment Laws and Procedures*, and the *All States Marriage and Divorce Guide* have been distributed to every legal assistance office. These guides are intended to be office references. A copy of each text will be distributed to legal assistance officers as part of the *Legal Assistance Handbook*, DA Pamphlet 27-12, when revision of the Handbook has been completed. If your office provides legal assistance and you did not receive these books, contact The Judge Advocate General's School, Administrative and Civil Law Division, Legal Assistance Branch, Charlottesville, VA 22901.

APO/FPO—Foreign or Domestic Address?

Taxpayers within the United States that receive notices of tax deficiency have 90 days from the date the notice was mailed to file their petition for redetermination with the U.S. Tax Court. Taxpayers outside the United States that receive such notices have 150 days from the date the notice was mailed to file the petition. Contrary to the position taken by the IRS, the U.S. Tax Court has held that notices of tax deficiency sent to APO and FPO addresses are "addressed to a person outside the United States" irrespective of the fact that an APO or FPO address is not a "foreign address." Servicemembers stationed outside the United States but receiving mail through APO or FPO addresses have 150 days from the mailing date of a tax deficiency notice to file their petition for redetermination. *Brown v. Commissioner, 78 T.C. 15 (1982).*

Garnishment

Court of Claims Judge Mastin G. White, in *Morton v. U.S.* (No. 290-77, Feb. 1982), ordered the Air Force to repay $18,000 it garnished from a servicemember's pay in compliance with a state garnishment order Judge White determined to be invalid. This ruling contravenes the existing requirement that military finance centers honor state garnishment writs for alimony and child support which appear "regular on their face." The Justice Department intends to appeal the case to a panel of claims court judges. If upheld, however, this case could result in closer scrutiny of state court garnishment orders by military finance centers before garnishment of servicemembers' pay.

Colonel Allan M. Morton and his wife, Patricia Kay, were separated in 1973, while living in Virginia. Colonel Morton was reassigned to Alaska. Colonel Morton voluntarily paid $500 per month for the support of the couple's two children until the older child reached 18, and $250 per month thereafter.

Mrs. Morton moved to Alabama and filed for divorce. Colonel Morton was served by registered mail, but not "personally served" as required by Alabama law. He did not enter an appearance during the proceedings. In 1975, the Alabama ccourt issued a divorce decree, ordering Colonel Morton to pay $500 per month for alimony and child support. Colonel Morton failed to comply with the order.

In December 1976, a writ of garnishment for $4100 in arrearages against Colonel Morton was served on the Air Force Finance Center. When the finance office notified Colonel Morton, he asserted that Alabama lacked jurisdiction over him since he was neither a resident, nor a domiciliary of Alabama, and Alabama did not have a long arm jurisdictional statute at the time of the case.

The Air Force complied with the writ and withheld the funds on the basis that it was required by statute to comply with a writ issued by a proper state court. The Air Force noted that Colonel Morton could contest the validity of the court order in a state court. Colonel Morton filed for relief in the Court of Claims, arguing that the Air Force was obligated to protect his military pay from an invalid garnishment order.

In his decision, Judge White held the government responsible only to honor writs issued by a "court of competent jurisdiction." He determined that the Alabama court lacked jurisdiction in this case. Judge White is the first judge to require government agencies to examine the jurisdictional basis of a state court prior to compliance with a garnishment writ.

Judge White's decision could have far-reaching effects since military servicemembers often contest garnishment orders on jurisdictional grounds. Prior to *Morton*, these servicemembers could obtain relief only through the issuance of an injunction by a federal court and the subsequent litigation of the jurisdictional issue in either a federal, or state court. The expense of this remedy usually precluded most servicemembers from receiving any relief from questionable garnishment writs.

The outcome of the government's appeal of *Morton* will be of great importance to many legal assistance officers and servicemembers. The military policy concerning garnishment actions will not change pending the outcome of this appeal. The services will continue to comply with orders "regular on their face." Until the appeal is decided, legal assistance officers should advise their clients of the possibility of filing an action in the Court of Claims for relief in appropriate garnishment actions.

Command Emphasis On Legal Assistance

The Army Legal Assistance Program is being emphasized at the highest levels of the Army. Senior officers throughout the Army were recently apprised of the following information:

THE ARMY LEGAL ASSISTANCE PROGRAM
LTC E. A. Pauley
Legal Assistance Office, OTJAG

The Chief of Staff of the Army continues to emphasize the importance of military families and stresses the need to improve military communities and the services available to Army families. He has stated, "We recruit soldiers but we retain families." CSA has initiated the Army Family Program to further the quality of life available to military families. In addition, an Army Family Liaison Office has been established to support the rights of working military family members.

The Judge Advocate General has placed renewed emphasis on the Army Legal Assistance Program to aid in the improvement of the quality of life in military communities. The program provides our soldiers and their family members with the support required to resolve the legal problems encountered in everyday life. Additional attorneys and legal clerks have been authorized and Staff Judge Advocates have been directed to increase and improve legal assistance services to the military community. Additional legal publications and resources have been provided to enhance the legal services available under the program.

While technical guidance on the Legal Assistance Program is the responsibility of The Judge Advocate General, initiating the program is the responsibility of commanders. Commanders are encouraged to visit and observe the operation of legal assistance offices and to insure that the physical facilities are adequate, that the available services are widely advertised at the installation, and that an effective method of determining client satisfaction exists. Suggestions concerning the operation of the Army Legal Assistance Program should be brought to the attention of local Staff Judge Advocates.

Criminal Law News

TJAG Message Announcing Article 15 Changes

P 141700Z APR 82

DAJA-CL 1982/6325

SUBJECT: Changes in Nonjudicial Punishment (NJP) Procedures.

1. On 24 March 1982 the Deputy Secretary of De-

fense approved an exception to the 1973 Laird Memorandum. This exception enabled CSA to approve a summarized Article 15 procedure which, in conjunction with other changes to all Article 15 procedures, will increase commanders' flexibility and provide a more timely and effective means to deal with minor misconduct.

2. These changes are essentially those announced during the 1981 JAG Conference.

3. The new procedures will authorize a commander to offer an enlisted servicemember a summarized Article 15 where the misconduct is very minor in nature. There is no right to consult with legal counsel, to a spokesperson or to an open hearing, and the punishment is limited to 14 days extra duty, 14 days restriction, an admonition or reprimand, or any combination thereof. The servicemember may refuse the summarized Article 15 and demand trial by court-martial, and may appeal if the summarized Article 15 is accepted. Other changes include new filing provisions for standard Article 15's which eliminate the major/minor distinction and authorize the imposing commander to direct filing in the permanent or restricted fiche of the OMPF; authorization for E-6's and above to petition the DA Suitability and Evaluation Board for transfer of a record of NJP from the permanent to the restricted fiche when it is in the best interest of the Army and the intended purpose of filing has been served; increased NCO involvement; and elimination of staying of punishments involving deprivation of liberty unless the appellate authority fails to take action on an appeal within 72 hours of the time of submission.

4. DAJA-CL is preparing a revision of AR 27-10 which is projected to be effective 1 November 1982. No implementation of the procedures set forth in paragraph 3 is authorized prior to the effective date of the revision of AR 27-10.

Correction—Involuntary Excess Leave

The article entitled, "Military Justice Amendments of 1981," which appeared in *The Army Lawyer*, Feb 1982, at page 28, contained an error. The word "approval" was inadvertently left out of a sentence referring to the effective date of involuntary excess leave. An accused who has received an unsuspended dismissal or an unsuspended punitive discharge may be placed on involuntary excess leave for a period of time from the date of sentence *approval* (initial action) until the case is finalized.

A Matter Of Record

Notes from Government Appellate Division, USALSA

1. Records of Trial

Trial counsel are responsible for the preparation of the record of trial. Paragraph 82*a*, Manual for Courts-Martial, United States, 1969 (Revised edition). While the record of the in-court proceedings must be authenticated as being accurate, equal care should be taken in preparing and assembling all of the material between the blue covers. Often the copy of the record of trial served upon the appellate divisions will not contain all of the material contained in the allied papers of the original record. Similarly, often the allied papers do not contain documents pertaining to the pretrial or post-trial handling of the case. This information may be critical to the resolution of the case upon appellate review. Trial counsel must insure that the allied papers fully document the history of the case prior to and after the trial.

2. Escape from Confinement/Escape from Custody

The difference between the offenses of escape from confinement and escape from custody has caused confusion in the past and has led to dismissal of charges because the wrong offense was alleged. Even though the two offenses fall under the same codal provision (Article 95, Uniform Code of Military Justice) and carry the same punishment, escape from custody is not a lesser included offense of escape from confinement. *See United States v. Ellsey*, 16 CMA 455, 37 CMR 75 (1966). Thus, trial counsel must carefully exam-

ine the circumstances surrounding the accused's restraint to determine whether the restraint was confinement or merely custody. *See United States v. Hodge*, 50 CMR 445 (AFCMR 1975). In *United States v. Mobley*, CM 440879 (ACMR 26 February 1982), the Army Court of Military Review provided a good discussion of the reasons for the difference between the two offenses.

3. Disobedience

When providng a charge of disobedience of a superior noncommissioned officer, one element to be proven is that the order was given by the accused's superior noncommissioned officer. It is not enough to prove that the victim is the accused's superior noncommissioned officer at the time of trial, for the required status relates to the time of the disobedience. Trial counsel must, by careful selection of questions during direct examination, insure that the status of the victim *at the time of the offense* is shown by the evidence. Further, if the victim is from a service different than the accused, it is not enough to show that the victim was superior in rank and a noncommissioned officer, it is also necessary to show that the victim was the accused's superior (Paragraph 170, MCM).

Convictions And Nonjudicial Punishments

1 July–31 December 1981

Number And Rate/1000 Of Persons Convicted and Persons Punished Under Article 15 UCMJ

	WORLD-WIDE		CONUS		OVERSEAS	
	Number	Rate/1000	Number	Rate/1000	Number	Rate/1000
General Courts-Martial	627	.79	289	.58	338	1.15
Special Courts-Martial	1,932	2.46	987	2.00	874	2.99
Summary Courts-Martial	2,206	2.81	1,557	3.16	649	2.22
Total Courts-Martial	4,765	6.06	2,833	5.74	1,861	6.36
Nonjudicial Punishments (Art. 15 UCMJ)	72,664	92.66	46,124	93.74	26,540	90.8
US Federal & State Courts (Felony* Convictions)	222	.28	220	.44	2	.006

Number Of Discharges Adjudged & Actually Executed During Report Period

	DISCHARGES ADJUDGED						DISCHARGES EXECUTED	
Type	WORLD-WIDE		CONUS		OVERSEAS			
Court	DD**	BCD**	DD	BCD	DD	BCD	DD	BCD
GCM	222	272	92	136	130	136	128	662
SPCM		662		371		291		

*A conviction is reportable when the offense is a felony under the law of the jurisdiction in which the accused was convicted.
**Dishonorable Discharge; Bad Conduct Discharge

Disposition Of Drug Abuse Offenders*

1 July–31 December 1981

No. of Nonjudicial punishments	No. of trials by court-martial		
	General	Special	Summary
9566	318	586	214

*Wrongful possession, sale, transfer, use or introduction into a military unit, base, station, post, ship or aircraft of marihuana, narcotics or a dangerous drug.

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

REPLY TO
ATTENTION OF

DAJA-SM

18 February 1982

SUBJECT: Legal Clerk and Court Reporter Skill Qualification Test Preparation

TO ALL STAFF AND COMMAND JUDGE ADVOCATES

1. Between 1 July 1982 and 31 March 1983, Army Legal Clerks and Court Reporters will take the Skill Qualification Test (SQT). The test will be similar to last year's test, but will have a new format and different tasks. The test is demanding and will be very difficult for those who are not well prepared.

2. The SQT program provides soldiers and commanders with the necessary tools to prepare for the test. The Legal Clerk Soldier manuals, FM 71D1/2/3/4, have been distributed through normal publication channels. These are essential to adequately prepare for the test. If your personnel have not received them, I urge you to take immediate steps to obtain these publications.

3. We have a responsibility to our legal clerks and court reporters and to the Army to prepare our personnel for the SQT. Preparation for last year's test was excellent, but there is always room for improvement. Therefore, you should take steps to develop and host appropriate training sessions and to monitor closely all preparations for the test.

4. I encourage all Staff and Command Judge Advocates to work toward obtaining maximum success on this third cycle of skill qualification testing and to better the fine record established last year.

/s/ Hugh J. Clausen
HUGH J. CLAUSEN
Major General, USA
The Judge Advocate General

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan

Continuing Education. Our Continuing Education program for legal clerks and court reporters is off to a good start. During the period 28 February to 3 March 1982 the 2d Annual Worldwide Legal Clerk/Court Reporter Workshop was hosted by the Military District of Washington, Washington, D.C. Over 150 legal clerks and court reporters attend the workshop, including members of the Army Reserves and representatives from the Air Force, Navy, and the Coast Guard. The principal objective of the workshop was to provide legal clerks and court reporters with the information necessary to remain current in military justice, claims, and legal assistance matters. Changes to the Uniform Code of Military Justice, the Manual for Courts-Martial, and soon to be implemented changes in the Article 15 procedures were discussed. Updates on the operation and administration of the Army Claims and Legal Assistance programs were presented and the Enlisted Career Management program of the JAG Corps was discussed. The Sergeant Major of the Army discussed the enlisted personnel status of the Army and commented on other topics of current interest. The Commander of the U.S. Army Legal Services Agency and the Chief, Trial Defense Service described the operations of their respective agencies. New court reporting equipment was demonstrated on the final day of the workshop.

Projected Courses, Workshops, and Conferences. To assist in budget preparation and planning for enlisted personnel training in FY 83, the following is a list of *projected* courses, conferences, and workshops. The exact dates will be published later.

Military Lawyer's Assistance Course—1 week; 11–15 July 1983, TJAGSA, Charlottesville, VA

Law Office Management Course—1 week; 1–5 August 1983, TJAGSA, Charlottesville, VA

Legal Clerk and Court Reporter Workshop—3 days; March 1983, Fort Monroe, VA

Chief Legal Clerk Conference—3 days; 13–15 July 1983, TJAGSA, Charlottesville, VA

Air Force Legal Service Advanced Course (for selected personnel) at Maxwell Air Force Base, Alabama—2 weeks, March 1983

Attendance for the Basic Legal Clerk, Court Reporting, Advanced NCO course (ANCOC), and the US Army Sergeants Major Academy (USASMA) requires selection and funding by MILPERCEN and are not listed. Other resident and correspondence courses are listed in the US Army Formal Schools Catalog, DA Pam 351-4.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

New Deputy Assistant Judge Advocate General for Reserve Affairs (MOB DES)

The Judge Advocate General has announced the selection of Colonel Bernard H. Thorn, JAGC, USAR, of Englewood, Colorado, to succeed Brigadier General Roy R. Moscato, USAR, of Chicago, Illinois, as Deputy Assistant Judge Advocate General for Reserve Affairs (MOB DES). Colonel Thorn is a private practitioner with active and Reserve commissioned service, both as a Signal Corps officer and as a judge advocate. Colonel Thorn received his undergraduate and law degrees from the University of Denver. His varied assignments within the Reserve Components of the JAGC have included service as a senior trial counsel and a JAGSO team director. His most recent assignment has been as the Staff Judge Advocate, 96th US Army Reserve Command, Ft. Douglas, Utah.

CLE News

1. Eligibility Requirements for CLE Courses at TJAGSA

Over the last several months a number of officers attending the continuing legal education courses offered by The Judge Advocate General's School did not meet the eligibility requirements for the courses. These courses are designed to orient and prepare judge advocates for duty in certain subject matters. Further, each officer attending must receive a quota for the particular course offered prior to arrival. An officer's arrival without an allocated quota disrupts the administrative, logistical, and instructional flow of the course. This is especially true in courses requiring substantial individual participation.

Staff judge advocates are reminded that officers selected to attend these courses must meet the course prerequisites listed in the School's Annual Bulletin. Once an eligible officer is selected, insure that a quota from the servicing training office is received before sending that officer to a course. Any requests for an exception to the prerequisites must be approved beforehand by the Academic Department Division offering the course.

Following this procedure insures that the right officers receive the training for which the courses are designed.

2. Quotas for TJAGSA CLE Resident Courses

Quota allocations for resident CLE courses conducted at The Judge Advocate General's School are obtained from local training offices which receive them from the MACOM's. Reservists obtain quotas through their unit or RCPAC if they are non-unit reservists. Army National Guard personnel request quotas through their units. The Judge Advocate General's School deals directly with MACOM and other major agency training offices. Specific questions as to the operation of the quota system may be addressed to Mrs. Kathryn R. Head, Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22901 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

3. Fourth Military Lawyer's Assistant Course.

The 4th Military Lawyer's Assistant Course (512-71D/20/30) will be conducted at The Judge Advocate General's School during the period 12-16 July 1982. The course is open only to enlisted servicemembers in grades E-3 through E-6 and civilian employees who are serving as paraprofessionals in a military legal office, or whose immediate future assignment entails providing professional assistance to an attorney. Attendees must have served a minimum of one year in a legal clerk/legal paraprofessional position and must have satisfactorily completed the Law for Legal Clerks Correspondence Course NLT 12 May 1982. (No waivers will be granted.) Offices planning to send personnel must insure individuals are eligible before submitting names for attendance.

4. Legal Administrative Technician Correspondence Course

Effective 1 May 1982, applicants for enrollment in the Legal Administrative Technician Correspondence Course will be required to have completed the Adjutant General NCOES Advanced Course either by correspondence or resident attendance. The purpose of this additional prerequisite is to enhance the overall knowledge and professionalism of legal clerks and court reporters. Attendees for the resident version of the Adjutant General NCOES Advanced Course are selected at Department of the Army level. The correspondence version is administered by the Army Institute for Professional Development, U.S. Army Training Support Center, Newport News, Virginia 23628. As a result of this additional requirement, prerequisites to enrollment in the Legal Administrative Technician Course will require that the applicant be a warrant officer or enlisted member in grade E-6 or above who has a primary MOS of 713A, 71D, or 71E and who has completed the Law for Legal Clerks Correspondence Course *and* the Adjutant General NCOES Advanced Course.

5. TJAGSA CLE Course Schedule

May 3–14: 3d Administrative Law for Military Installations (5F–F24).

May 12–14: 4th Contract Attorneys Workshop (5F–F15).

May 17–20: 10th Methods of Instruction.

May 17–June 4: 24th Military Judge (5F–F33).

May 24–28: 19th Law of War Workshop (5F–F42).

June 7–11: 67th Senior Officer Legal Orientation (5F–F1).

June 21–July 2: JAGSO Team Training.

June 21–July 2: BOAC (Phase VI-Contract Law).

July 12–16: 4th Military Lawyer's Assistant (512–71D/20/30).

July 19–August 6: 25th Military Judge (5F–F33).

August 2–6: 11th Law Office Management (7A–713A).

August 9–20: 93rd Contract Attorneys (5F–F10).

August 16–May 20, 1983: 31st Graduate Course (5–27–C22).

August 23–27: 6th Criminal Trial Advocacy (NA).

September 1–3: 6th Criminal Law New Developments (5F–F35).

September 13–17: 20th Law of War Workshop (5F–F42).

September 20–24: 68th Senior Officer Legal Orientation (5F–F1).

October 5–8: 1982 Worldwide JAGC Conference.

October 18–December 17: 99th Basic Course (5–27–C20).

6. Civilian Sponsored CLE Courses

June

25–26: ATLA, Military Law Seminar, San Antonio, TX.

July

4–9: NJC, Alcohol and Drugs—Specialty, Reno, NV.

4–9: NJC, Civil Actions in Special Courts—Graduate, Reno, NV.

11–16: NJC, Court Management-Managing Delay—Speciality, Reno, NV.

11–16: NJC, Family Court Proceedings—Specialty, Reno, NV.

11–16: ALIABA, Federal Securities Law, Palo Alto, CA.

11–23: NJC, The Judge and The Trial—Graduate, Reno, NV.

11–8/5: NJC, General Jurisdiction—General, Reno, NV.

12–15: FBA, Federal Practice Institute, Washington, DC.

12–16: SNFRAN, Government Contracts, Las Vegas, NV

14: ABICLE, Recent Developments in the Law, Huntsville, AL.

15–16: PLI, Antitrust Law Institute, Chicago, IL.

15–16: PLI, Current Developments in Trademark Law, New York, NY.

15–17: ALEHU, Drafting Wills & Trusts, St. Paul, MN.

18–23: NJC, Adm. Law: Fair Hearing—General, Reno, NV.

18–23: NJC, Judicial Writing in Trial Courts —Specialty, Reno, NV.

19–22: FBA, Federal Practice Institute, Washington, DC.

19–23: TUCLE, Admiralty Law, Athens, GA.

19–31: HLS, Program of Instruction for Lawyers, Cambridge, MA.

22: ALEHU, Real Estate Leasing & Leases, Bloomington, MN.

23: ALEHU, Real Estate Sale/Leaseback Transactions, Bloomington, MN.

25–30: NJC, Evidence—Graduate, Reno, NV.

25–8/5: NJC, New Trends—Graduate

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, 539 Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783–5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ABICLE: Alabama Bar Institute for Continuing Legal Education, Box CL, University, AL 35486.

AKBA: Alaska Bar Association, P.O. Box 279, Anchorage, AK 99501.

ALEHU: Advanced Legal Education, Hamline

University School of Law, 1536 Hewitt Avenue, St. Paul, MN 55104.

ALIABA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ATLA: The Association of Trail Lawyers of America, 1050 31st St., N.W. (or Box 3717), Washington, DC 20007. Phone: (202) 965–3500.

BNA: The Bureau of National Affairs Inc., 1231 25th Street, N.W., Washington, DC 20037.

CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638–0252.

FJC: The Federal Judicial Center, Dolly Madison House, 1520 H Street, N.W., Washington, DC 20003.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337–7000.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

GTULC: Georgetown University Law Center, Washington, DC 20001.

HICLE: Hawaii Institute for Continuing Legal Education, University of Hawaii School of Law, 1400 Lower Campus Road, Honolulu, HI 96822.

HLS: Program of Instruction for Lawyers, Harvard Law School, Cambridge, MA 02138.

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543–3063.

IPT: Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.

KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.

LSBA: Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.

LSU: Center of Continuing Professional Development, Louisiana State University Law Center, Room 275, Baton Rouge, LA 70803.

MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

MIC: Management Information Corporation, 140 Barclay Center, Cherry Hill, NJ 08034.

MOB: The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65102.

NCAJ: National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466–3920.

NCATL: North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.

NCCD: National College for Criminal Defense, College of Law, University of Houston, 4800 Calhoun, Houston, TX 77004.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749–1571.

NCJFCJ: National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.

NCLE: Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.

NCSC: National Center for State Courts, 1660 Lincoln Street, Suite 200, Denver, CO 80203.

NDAA: National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.

NITA: National Institute for Trial Advocacy, William Mitchell College of Law, St. Paul, MN 55104.

NJC: National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507. Phone: (702) 784–6747.

NLADA: National Legal Aid & Defender Association, 1625 K Street, NW, Eighth Floor, Washington, DC 20006. Phone: (202) 452–0620.

NPI: National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1–800–328–4444 (In MN call (612) 338–1977).

NPLTC: National Public Law Training Center, 2000 P. Street, N.W., Suite 600, Washington, D.C. 20036.

NWU: Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611.

NYSBA: New York State Bar Association, One Elk Street, Albany, NY 12207.

NYSTLA: New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.

NYULT: New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PATLA: Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.

PBI: Pennsylvania Bar Insitute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765–5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SMU: Continuing Legal Education, School of Law, Southern Methodist University, Dallas, TX 75275.

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

TUCLE: Tulane Law School, Joseph Merrick Jones Hall, Tulane University, New Orleans, LA 70118.

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

Current Materials of Interest

1. Regulations

NUMBER	*TITLE*	*CHANGE*	*DATE*
AR 135-215	Officer Periods of Service on Active Duty	902	16 Mar 82
AR 350-100	Officer Active Duty Service Obligation		1 Feb 82
AR 385-10	The Army Safety Program	901	5 Mar 82
AR 385-40	Accident Reporting and Records	901	12 Feb 82
AR 623-205	Enlisted Evaluation Reporting System	901	26 Feb 82
AR 635-5	Separation Documents	901	16 Mar 82
AR 710-2	Supply Policy Below the Wholesale Level	901	15 Mar 82
AR 735-11	Accounting for Lost, Damaged, and Destroyed Property	901	22 Feb 82

2. Article.

Richard W. Thornburg, *The Due-On-Sale Clause: Current Legislative Actions and Probable Trends*, Vol. 9, No. 4, Fla. St. U.L. Rev. 645 (Fall 1981).

3. Catalog.

National College for Criminal Defense 1982 Catalog. Contents: programs, publications, and audio/video tapes. Address: National College for Criminal Defense, P.O. Drawer 14007, Houston, TX 77021.

4. Professional Writing Award for 1981.

Each year, the Alumni Association of The Judge Advocate General's School gives an award to the author of the best article published in the Military Law Review during the previous year. The award consists of a written citation signed by The Judge Advocate General and an engraved plaque. The history of and criteria for the award are set forth at 87 Mil. L. Rev. 1 (winter 1980), updated at 90 Mil. L. Rev. 1 (fall 1980) and 93 Mil. L. Rev. 1 (summer 1981).

Captain Edward D. Holmes, USAR, of Kansas City, Missouri, has been selected to receive the award for 1981. The award is given for his article, "The Residual Hearsay Exceptions: A Primer for Military Use," published at 94 Mil. L. Rev. 15 (fall 1981). Captain Holmes is a prosecutor for the United States Department of Justice.

5. Punitive Discharges and Voter Disenfranchisement.

The Secretary of Defense has been informed that Department of Defense personnel may be disseminating inaccurate information regarding the relationship between dishonorable discharges and voter disenfranchisement. You are reminded that the fact that an individual has a dishonorable discharge does *not* constitute voter disenfranchisement *per se*. For example, some state laws may disenfranchise persons convicted of either a felony or a misdemeanor. Additionally, there are state laws which disenfranchise persons only for the duration of the time they could have served in prison for the offense leading to such conviction. Further, some state laws only disenfranchise persons upon conviction of certain specified felonies. The reason for the dishonorable discharge must be investigated in light of the applicable state law where the person is disenfranchised, not the discharge itself. The situation exists where a person may be disenfranchised for a certain crime in one state, yet if his residence were in another state, he would not be disenfranchised. Because of these and other variables, no individual should be told that he has lost his voting rights solely upon the basis of a dishonorable discharge.

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

☆U.S. GOVERNMENT PRINTING OFFICE: 1981: 361-809/109